

AMENDED IN ASSEMBLY APRIL 16, 1997
AMENDED IN ASSEMBLY MARCH 20, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 308

Introduced by Assembly Member Leonard

February 14, 1997

An act to amend Section 10177.4 of the Business and Professions Code, and to add Section 641.4 to the Penal Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 308, as amended, Leonard. Commercial bribery: real estate sales.

(1) Existing law provides, except as specified, that every employee, as defined, who solicits, accepts, or agrees to accept any money or thing of value from any person other than his or her employer, other than in trust for the employer, corruptly, as defined, and without the knowledge or consent of the employer, in return for using or agreeing to use his or her position for the benefit of that other person, and any person who offers or gives an employee money or any thing of value under those circumstances, is guilty of commercial bribery, except as specified. Existing law further provides that commercial bribery is punishable by imprisonment in a county jail for not more than one year if the amount of the bribe is \$1,000 or less, or by imprisonment in a county jail, or

in the state prison for 16 months, or 2 or 3 years if the amount of the bribe exceeds \$1,000.

This bill would provide that an employee of a title insurer, underwritten title company, or controlled escrow company who corruptly violates a certain statutory provision by paying, directly or indirectly, a commission, compensation, or other consideration to a real estate salesperson or real estate broker, or a real estate salesperson or real estate broker who corruptly violates another statutory provision by receiving from an employee of a title insurer, underwritten title company, or controlled escrow company a commission, compensation, or other consideration, as an inducement for the placement or referral of title business, is also guilty of commercial bribery.

(2) Existing law authorizes the Real Estate Commissioner, after hearing in accordance with certain provisions, to suspend or revoke the license of a real estate licensee who claims, demands, or receives a commission, fee, or other consideration, as compensation or inducement, for referral of customers to any escrow agent, structural pest control firm, home protection company, or underwritten title company.

This bill would prohibit a licensee from being disciplined for reporting to the commissioner violations of the above provision by another licensee, unless the licensee making the report had guilty knowledge of, or committed or participated in, the violation of that provision. By making the crime of commercial bribery applicable to a new category of persons, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that
2 illegal rebates and kickbacks are a significant problem in



1 the marketing of title insurance in California, and have
2 been a problem for more than two decades.
3 Administrative penalties available to the Department of
4 Insurance and the Department of Real Estate are
5 ineffective in curtailing this illegal activity, which stifles
6 competition, increases costs to consumers, and prejudices
7 legitimate competitors in the marketplace.

8 It is the intent of the Legislature in enacting this bill to
9 provide an effective deterrent to illegal rebates and
10 kickbacks by clarifying that those who knowingly violate
11 the law are guilty of commercial bribery.

12 It is further the intent of the Legislature to ensure that
13 real estate licensees who are not participating in this
14 illegal rebate and kickback activity report, without fear
15 of license sanctions, their knowledge of participation in
16 this activity by other licensees to the Real Estate
17 Commissioner.

18 SEC. 2. Section 10177.4 of the Business and
19 Professions Code is amended to read:

20 10177.4. (a) Notwithstanding any other provision of
21 law, the commissioner may, after hearing in accordance
22 with this part relating to hearings, suspend or revoke the
23 license of a real estate licensee who claims, demands, or
24 receives a commission, fee, or other consideration, as
25 compensation or inducement, for referral of customers to
26 any escrow agent, structural pest control firm, home
27 protection company, title insurer, controlled escrow
28 company, or underwritten title company. A licensee may
29 not be disciplined under any provision of this part for
30 reporting to the commissioner violations of this section by
31 another licensee, unless the licensee making the report
32 had guilty knowledge of, or committed or participated in,
33 the violation of this section.

34 (b) The term “other consideration” as used in this
35 section does not include any of the following:

36 (1) Bona fide payments for goods or facilities actually
37 furnished by a licensee or for services actually performed
38 by a licensee, provided these payments are reasonably
39 related to the value of the goods, facilities, or services
40 furnished.

(2) Furnishing of documents, services, information, advertising, educational materials, or items of a like nature that are customary in the real estate business and that relate to the product or services of the furnisher and that are available on a similar and essentially equal basis to all customers or the agents of the customers of the furnisher.

(3) Moderate expenses for food, meals, beverages, and similar items furnished to individual licensees or groups or associations of licensees within a context of customary business, educational, or promotional practices pertaining to the business of the furnisher.

(4) Items of a character and magnitude similar to those in paragraphs (2) and (3) that are promotional of the furnisher's business customary in the real estate business, and available on a similar and essentially equal basis to all customers, or the agents of the customers, of the furnisher.

(c) Nothing in this section shall relieve any licensee of the obligation of disclosure otherwise required by this part.

SEC. 3. Section 641.4 is added to the Penal Code, to read:

641.4. (a) An employee of a title insurer, underwritten title company, or controlled escrow company who corruptly violates Section 12404 of the Insurance Code by paying, directly or indirectly, a commission, compensation, or other consideration to a licensee, as defined in Section 10011 of the Business and Professions Code, or a licensee who corruptly violates Section 10177.4 of the Business and Professions Code by receiving from an employee of a title insurer, underwritten title company, or controlled escrow company a commission, compensation, or other consideration, as an inducement for the placement or referral of title business, is guilty of commercial bribery.

~~(b) This section does not apply where the amount of money or monetary worth of the thing of value is one hundred dollars (\$100) or less.~~

~~(c)~~

1 (b) Commercial bribery is punishable by
2 imprisonment in a county jail for not more than one year
3 if the amount of the bribe is one thousand dollars (\$1,000)
4 or less, or by imprisonment in a county jail, or in the state
5 prison for 16 months, or two or three years if the amount
6 of the bribe exceeds one thousand dollars (\$1,000).

7 ~~(d)~~

8 (c) For purposes of this section, “title business” has the
9 same meaning as that used in Section 12404 of the
10 Insurance Code.

11 ~~(e)~~

12 (d) This section shall not be construed to supersede
13 or affect Section 641.3. A person may be charged with a
14 violation of this section and Section 641.3. However, a
15 defendant may not be punished under this section and
16 Section 641.3 for the same act that constitutes a violation
17 of both this section and Section 641.3.

18 SEC. 4. No reimbursement is required by this act
19 pursuant to Section 6 of Article XIII B of the California
20 Constitution because the only costs that may be incurred
21 by a local agency or school district will be incurred
22 because this act creates a new crime or infraction,
23 eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section
25 17556 of the Government Code, or changes the definition
26 of a crime within the meaning of Section 6 of Article
27 XIII B of the California Constitution.

28 Notwithstanding Section 17580 of the Government
29 Code, unless otherwise specified, the provisions of this act
30 shall become operative on the same date that the act
31 takes effect pursuant to the California Constitution.